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May 28, 2014

VIA ECF

The Honorable Chief Judge Loretta A. Preska
United States District Court,
for the Southern District of New York
500 Pearl Street, Room 2220
New York, NY 10007-1312

Re: *In re Digital Music Antitrust Litig.*, No. 06-md-1780 (S.D.N.Y.)

Dear Judge Preska:

We write to seek the Court's assistance regarding two matters in the above-entitled action. First, currently pending before the Court is Plaintiffs' pre-motion letter regarding adding and removing certain named Plaintiffs. The Court held a hearing on this matter on April 15, 2014 and deferred ruling until the Plaintiffs provided certain information regarding those Plaintiffs who sought to be removed from the litigation. Defendants agreed regarding three of the Plaintiffs, and opposed removal of others. Issues related to the addition of class representatives were not discussed at the hearing. The Court has not ruled on the addition or removal of proposed class representatives.

Currently, the parties are meeting and conferring regarding scheduling the depositions of proposed class representatives. An issue has arisen which Plaintiffs seek the Court's guidance to resolve. Because the Court has not yet ruled that six class members may be added as class representatives, Plaintiffs are hesitant to force these currently absent class members to sit for what we expect to be lengthy and contentious depositions and provide extensive documents and data when it may turn out that the Court denies the request to add these individuals to the operative complaint.¹ Plaintiffs are mindful of the deadlines for class certification briefing. To that end, Plaintiffs sought Defendants' agreement to hold the depositions of these yet-to be added Plaintiffs, but to seal the depositions and agree that no use could be made of the depositions or materials produced by those class members in this or any other action, should the Court deny Plaintiffs'

¹ Those plaintiffs are Shawn Sellers, Cynthia Walker, Ronald Donahue, Alexandra Nordlinger, Randal Schaffer and Michael Newton.

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request. Defendants did not agree to this request. Without such assurances, Plaintiffs believe these currently absent class members should not be subject to a deposition or be forced to provide significant confidential data regarding their music purchases. Therefore, Plaintiffs respectfully request that no depositions or production of digital music of the proposed new representatives occur until after the Court rules on the request to add these absent class members or the Court allow the depositions currently scheduled of the proposed new representatives be sealed and grant Plaintiffs' request that no use be made of these depositions or discovery material should the Court deny the motion to add representatives.

Second, the Court set a date of May 29, 2014 for Plaintiffs to provide certain data to Defendants, in the form of copies of actual digital music files.² The process of gathering this data is far more complicated than expected. Plaintiffs have had to hire a forensic data expert and have developed protocols to retrieve the data from the various devices in the possession, custody and control of the Plaintiffs. The very act of copying the files, if protocols are not followed, may result in the appearance that a file has been improperly copied. Because of these issues, as well as the lack of technological sophistication of the Plaintiffs, Plaintiffs are concerned that the data will not be available for all of the Plaintiffs by the May 29, 2014 deadline. Plaintiffs sought an extension regarding production, and Defendants have not yet responded. Therefore, Plaintiffs request a three-week extension to ensure that the materials the Court ordered to be provided can be properly produced to Defendants. Plaintiffs would be willing to provide an extension of the time for Defendants' response to class certification for a similar time period.

Because of the pending deadline, as well as the need to settle the issue regarding the depositions of currently absent class members, Plaintiffs seek the Court's expedited consideration of these requests.

Respectfully submitted,



ALEXANDRA S. BERNAY

ASB:jpgk

cc: All Counsel via ECF

² The Court's May 5, 2014 Order requires Plaintiffs to produce "one copy of all digital music files in Plaintiffs' possession, custody or control (with all metadata intact) that each Proposed Class Representative purchased, acquired, possessed, copied and/or shared during Plaintiffs' proposed class period." Dkt. No. 253.

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 28, 2014.

s/ Alexandra S. Bernay

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